

MEETING MINUTES

New Source Review Retooling Advisory Group

Meeting 6 - October 23, 2003 - Madison, WI

Advisory Group Participants: Renee L. Bashel, Dept. of Commerce; Jeff Burger, DNR Southeast Region; Mary Jo Kopecky (for Lloyd Eagan), DNR Air & Waste Division; Jeff Hanson, DNR Bureau of Air Management; Myron Hafele, Kohler Co.; Dave Hildreth, DNR Northeast Region; Howard Hofmeister, Bemis Co.; Rick Osa, STS Consultants; Michele Pluta, Alliant Energy; Annabeth Reitter, StoraEnso; Jeff Schoepke, Wisconsin Manufacturers & Commerce; Thomas T. Stocksdales, S.C. Johnson; Mark Thimke, Foley & Lardner; Paul White (for Jon Konings), We Energies. **Absent:** Lloyd Eagan, DNR Bureau of Air Management; Tom Estock, Quad/Graphics, Inc; Hank Handzel, DeWitt Ross & Stevens, for Wisconsin Paper Council; Imelda Stamm, DNR Northeast Region.

Others: Todd Palmer, DeWitt, Ross & Stevens; Ed Wilusz, Wisconsin Paper Council; Gary Van Helvoirt, WI Public Service Corp.; Neil Howell, WI Dept. of Administration; Lois Aide, DNR Division of Air & Waste; John Shenot, DNR Bureau of Cooperative Environmental Assistance; Greg Swanson, DNR Bureau of Communication & Education; Marcia Penner, DNR Legal Services; Darin Harris, DNR Bureau of Management & Budget (facilitator); Steve Dunn, Roger Fritz, Caroline Garber, Anne Urbanski (note taker), DNR Bureau of Air Management.

Handouts/Overheads: See <http://www.dnr.state.wi.us/org/aw/air/hot/nsr/oct232003/>

Next meeting: Wednesday, October 29, 2003, from 9:00 a.m. to 3:00 p.m. in Room 027, GEF 2, 101 S. Webster St., Madison.

Discussion

Review of 10/23 agenda and 10/15 minutes: Darin Harris said the purpose of this meeting is to look at DNR's Clean Unit proposal a second time and discuss what the group thinks is possible, then look at pollution control projects (PCPs) for the first time, then circle back to applicability, demand and baseline issues from earlier meetings. It's critical for the group to try to find the "middle ground" (things they can at least live with) so DNR can start drafting the rule. There were no comments on last week's minutes. Please send any comments, corrections, etc. to Anne Urbanski by email.

Clean Units reprise - Jeff Hanson presented overheads reviewing proposals developed last week (see <http://www.dnr.state.wi.us/org/aw/air/hot/nsr/oct232003/>). Issues to resolve - Retroactive CU determinations, redesignation options, investment, and MACT applicability as CU. Ed Wilusz asked DNR to discuss the concept of geographic "area of concern". Hanson detailed each issue and asked the group for their responses, new proposals etc.

1) Retroactive Clean Unit determinations. The idea is to extend the CU designation *to the full extent allowed* in the federal rule. DNR is not married to the 1/1/2006 deadline for submitting these determinations. Industry would like the submission window to be as close to two years as possible. Also, DNR would be amenable to alternate sources for retroactively determining BACT/LAER besides the RACT/BACT/LAER Clearinghouse. Results of a quick "love it, hate it, could live with it" poll:

- Ed's - making old units meet current (2002) RBL Clearinghouse and designate CU's for 10 years from when they are shown to meet the clearinghouse or equivalent (other reviews conducted inside and outside Wisconsin, trade association info, vendor data, etc.)
- Preferred to DNR proposal
- Application date window??
 - ~~Date certain two-year window for application from effective date of DNR rule. **Hated**~~

- Tie application *deadline* to SIP approval date as announced in Federal Register, so application deadline would be two years from effective date of SIP *approval* (usually 30 days after appear in Federal Register). Marcia Penner was not sure the Legislative Clearinghouse would accept this. **Preferred or could live with.**
 - Make the application window two years from effective date of rule or 1/1/2006, whichever is later. **Could live with.**
- 2) **Redesignation options.** DNR proposed to have ability to re-evaluate a unit's CU designation if the area where it's located is redesignated to nonattainment for any criteria pollutant *for which the unit receives a CU designation*. Options and straw poll results on each:
- Reevaluate designation as clean unit - **negative**
 - Require offset from CU employing BACT for significant emission increases. Offsets don't have to come from that unit or facility, could trade offsets. Must show you have those offsets. Probably use attainment ratio for area. E.g. 1.3:1 in severe nonattainment area. -- **negative to neutral**
 - As part of SIP, case by case evaluation of CU status. - **could live with or better - (DNR's preference)**
 - Federal rule language - **most preferred option**
- 3) **Units with MACT controls qualify as CU's.** NSR applies only to NSR pollutants, which are not (mostly) covered by MACT standards, which apply to pollutants listed in s.112 of the Clean Air Act Amendments. Possible that you could justify what you're doing for MACT as being BACT for CU's. DNR could put an option in draft rule asking for comments on allowing MACT sources to be CU's as well. **The group generally liked this idea.**
- 4) **Investment.** How to define. People spoke with their companies' tax accountants since the last meeting. IRS guidance is not very clear so EPA could second-guess companies' accounting procedures. The group agreed on conceptually defining "investment" as "expenditures whose purpose is to reduce emissions"; DNR can do wordsmithing later. Hanson noted that the preamble to EPA's rule contains some language to this effect; perhaps we just want to add some clarity to the rule language.
- 5) **Geographic area of concern.** Ed Wilusz said industry is concerned about the "area of concern" concept. In the context of PALs and elsewhere, they think it is an undefined concept. For NSR purposes it could, practically, redefine nonattainment areas in a broader way. Another potential concern is that DNR had always included increment issue as part of that. But increment issues apparently are site specific, so how do you make the area of concern concept work? Wisconsin Paper Council is uncomfortable with that concept. Hanson noted that DNR has used that term only in relation to PALs, not in relation to CU's or other aspects of the NSR rule. DNR's concern is that the federal rule not only might impact a nonattainment area but also might have localized impact in an attainment area. Hanson thinks the "area of concern" concept would be hard to deal with outside the nonattainment areas. Conclusion - this is not dealt with in the rule as it's an implementation issue.

Pollution Control Projects (PCPs) - First look. Hanson presented overheads on PCPs, which exclude new emission units. Types of PCPs are listed in the federal rule; however a PCP could be a listed or unlisted project. We've already identified two issues related to PCPs -- the notice

and go provisions for listed categories of projects and the interface of emission reduction credits with PCPs.

- 1) DNR issues with notice-and-go: does not provide any DNR or public input on PCP; doesn't provide notice and go for projects that are not listed. DNR's proposed options:
 - proceed with PCP after notice for listed projects but risk DNR or EPA disagreeing;
 - 21 day review period for DNR, no comment after 21 days means project may commence.
 - Notice and go for listed only but DNR open to additions to the listBig issue with notice and go is opportunity for DNR to look at it, let you know DNR or feds could disagree, or a small review / comment period.
- 2) DNR issues with emission reduction credits and PCPs - Similar approach to CU's. DNR's proposals:
 - ERC would be surplus if it goes beyond PCL levels and is made enforceable through permit process. If increase in collateral pollutants is significant, the project must go through NSR.
 - ERC would not be surplus if PCP were extended to account for additional reduction and meets PCP test.

Annabeth Reitter asked whether these options would be outside of Minor Source permit process. Hanson said a facility could satisfy these options through the usual 30-day public comment period that DNR requires for minor sources, or through DNR's proposed 21-day review period. Reitter said DNR seems to be assuming that at some point there would be streamlining so that PCP project wouldn't go through minor source permitting.

Applicability test options reprise - Another look at items 13-18. (See (link to website)):

- #13 - Look back period options - 4 options shown on slide.
- #14 and #18 - lumped together for startup shutdown and malfunction emissions. - 3 options
- #15 - different pollutant different baseline - 4 options
- #16 - new unit baseline emissions - accounting for new units in the baseline - 3 options
- #17 - projection period - 3 options

Some are hybrid options:

- Same look back period as projection period
- Use of 10-yr. look back period requires same period be used for all pollutants; 5 yr. look back allows different baselines.
- 10 yr. look back and projection, delete demand exclusion

Harris said these lists are pretty consistent with previous meeting minutes, EPA option and several others you thought were worth exploring. We want to figure out what is the best middle-ground option that exists - something everyone can live with, a win-win if possible. If not, what are the best options and are there any additional options.

#13 Look back period options:

- 1) 24 month period in previous 10 yrs. - no notification to DNR, at your own risk.
- 2) 24 month period in previous 5 yrs. - no notification to DNR, at your own risk

- 3) 24 month period in previous 5 years, ability to petition for 10 years - Hanson said ability to petition has to be based on and demonstrate something extraordinary such as a fire or other catastrophe.
- 4) 24 month period in previous 10 yrs. coupled with 10 yr. projection excluding demand-based increases
- 5) NEW option - 24-month period within past 10 years with notice sent to DNR. Work out what happens once notice goes to DNR

Mark Thimke said industry's perspective is that there's a certain amount of air resource that can be allocated for economic use in attainment areas. What he hears from DNR is they want an anti-backsliding provision. WMC sees this as let's look back 10 years, we won't hit the ambient standard.

- 6) NEW option - Treat nonattainment differently than attainment area. (have two tracks)
 - Applicability test would apply only to remodeled or reconstructed units (treat replacement units as if new)
 - 2 years in previous 10 would apply in attainment areas.

The group was not ready to do thumbs up or down on any of the proposals yet so they took up the next topics.

Items 14 and 18 - start up, shut down and malfunction emissions (see slide)

- 1) include startup, shutdown and malfunction emissions in look back and projection (top one was most preferred earlier)
- 2) see slide (which one? Details?)
- 3) see slide (which one? Details?)
- 4) include only planned startups and shutdowns (not malfunctions) in lookback and projection. - Steve Dunn suggests "ignore unplanned events" - start, shut etc.

#15 - different pollutants, different baseline periods.

Allowing different baselines for different pollutants can be an administrative burden for DNR to keep track of them all. Also doesn't reflect an operational scenario, more a way to use emissions to cover a calculation. Mark Thimke said DNR seems to be using "production rate" as a surrogate for "highest emission period"; industry's point of view is that there's an amount of 'space' in attainment areas for adding emissions, which mean economic growth.

DNR option - **could say this does not apply to replacement units.**

NEXT TIME:

- Applicability test again - new issues and 15, 16 and 17
- PCPs again
- PALs if we have time.

Other business

Harris said DNR is not able to provide the extranet that it had wanted to provide so that the group could mark up the draft rule; the department hopes to have it up and running before the next round of NSR conversations (when is that?). Hanson noted that the STAPPA/ALAPCO menu of options is now available on DNR's website. DNR will try to use the S/A options where possible in drafting the NSR rule. We'll probably walk through some of those ideas on 11/5. Roger Fritz will facilitate the 10/29 meeting. Kopecky thanked the group for today's dialog.

